IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Second Appeal No.1391 of 2005

Sampat Anna Nikam
deceased through his L.Rs
1A. Gandharva Sampat Nikam
and others ..Appellants

vs.

Arjun Govind Nikam ..Respondents

Shri L.S.Gaikwad for appellants
Shri N.V.Walvalkar, Sr.Counsel i/b Shri R.S.Kate for respondents.

CORAM: S.C.DHARMADHIKARI J.
25th **July, 2007**

P.C.

1. This second appeal is challenging the judgment and decree of the lower Appellate Court delivered on 3rd September, 1996 in Reg.Civil Appeal no.490 of 1988 reversing that of the Trial Court in Reg.Civil Suit No.379 of 1980 dated 30th September, 1988. After the second appeal was argued for some time a suggestion was given by the Court to the parties which are related to each other or in any event residing in the same Taluka and District.

2. After taking instructions from the respondents/original plaintiff who is present in Court, Shri Walavalkar, learned Senior Counsel appearing for him, states that in the event the sale deed is executed by the

appellant/original defendant to the suit so also possession is handed over and the Appellate decree is marked satisfied accordingly, the respondent has instructed him that he would be agreeable to pay to the appellant a sum of Rs.75,000/- within such time as is stipulated by this Court.

3. Shri Gaikwad, once again upon instructions, states that the appellants are the heirs of the original defendant Sampat Anna Nikam. He has also instructions to state that this sum would be accepted if paid expeditiously in full and final settlement of all claims and upon the said sum being paid, not only the sale deed would be executed but possession of the suit property would be handed over to the respondent/plaintiff.

4. In the light of the fact that the parties are consenting to the above, Shri Gaikwad does not press this second appeal. However, by consent of the parties, the decree of the lower Appellate Court is modified to the extent that the consideration determined therein of Rs.17,000/- and Rs.5000/- shall stand substituted by the sum of Rs.75,000/- Rest of the decree stands.

5. The appellants undertake to execute the sale deed in favour of the respondent/plaintiff so also hand over physical possession of the suit property to the appellant.

6. In view of the above undertaking of the appellants, respondents undertake to pay to the appellants a sum of Rs.75,000/- within a period of 3 weeks from today.

7. The said sum would be towards full and final settlement of all the claims between the parties and needless to state that the sale deed would be executed immediately upon receipt of the said sum so also physical possession of the property handed over by the appellants to the respondent before this Court. Further needless to state that if the appellants fail to abide by their undertakings it would be open for the respondents/plaintiffs after payment/deposit of the said sum of Rs.75,000/- to take such steps to enforce the decree in accordance with law so also proceed against the appellants for breach of the undertakings given to this Court. Needless to state that this order does not prevent the respondents/original plaintiffs from depositing the said sum of Rs.75,000/- in Trial Court and the Trial Court should accept the same if deposited and thereafter permit the respondents to take steps as are permissible in law to execute the sale deed. Undertakings given by both sides are accepted. Second appeal is disposed of.

8. In view of disposal of the second appeal civil appalication no.110 of 2006 does not survive and dispose

of accordingly. Ad-interim order to stand vacated.

(S.C.DHARMADHIKARI J.)